IN RE: PETITION FOR SPECIAL 50' North Pulaski Highway * ZONING COMMISSIONER 388' W White Avenue * OF BALTIMORE COUNTY (8012 Pulaski Hwy) 15th Election District 7th Councilmanic District * CASE #89-77X Burn Allen Stephenson, et ux * Petitioners

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Petitioners request approval of a Special Exception to use the herein described property for one (1) double faced illuminated 12' x 25' outdoor advertising (sign) structure, as more particularly described on Petitioners' Exhibit 1.

The Petitioner, Penn Advertising of Baltimore, Inc., appeared by their agent, Mr. Barry Freidman, and were represented by Stuart R. Berger, Esquire. The Petitioners, Mr. and Mrs. Burn Allen Stephenson, did not appear. George Dawson of the Maryland State Highways appeared for informational purposes, but did not testify. There were no Protestants. All of the testimony was provided by Mr. Barry Friedman who testified to the prerequisites of Section 502.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) and testified in the affirmative that all of those prerequisites would be met by the establishment of a double faced illuminated outdoor advertising structure on the subject property, as shown on Petitioner's Exhibit 1. Furthermore, Mr. Freidman also testified as to the requirements established by Section 413.3 (a thru i) have or would be complied with by this particular outdoor advertising structure and that the subject site is consistent with B.C.Z.R.

PETITION FOR SPECIAL EXCEPTION

#43

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for ___one (1) double faced illuminated______ 12' x 25' outdoor advertising structure

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Legal Owner(s): Contract Furchaser: Pean Advertising of Baltimore Inc. anice Marie Stephenson (Type or Print Name)

- puce Man Signature (Type or Print Name) Kolent South 3001 Remington Avenue Baltimore, Maryland 21211 NE3E City and State Attorney for Petitioner: 9837 San Sierra Way Stuart R. Berger esq (Type or Print Name) Port Richey, Fla. 34668 Name, address and phone number of legal owner con-36 South Charles Street Baltimore, Maryland 21201 City and State Attorney's Telephone No.: (301)332-8562

ORDERED By The Zoning Commissioner of Baltimore County, this _____ day of _____, 19_ K, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 21st day of Septenter, 19, at 9 o'clock

Thurs. 10.27.88 at 11am. J. Robert Haires.

ESTIMATED LENGTH OF HEARING -VEHR.

AVAILABLE FOR HEARING

WORL/TUES./ FOR - HEARING

OTHER DATE 5/7/88

The Petitioner testified that, based on his professional experience, it was his opinion that the business would not cause any adverse impact and would not create traffic congestion over and above what already exists. He testified that the conditions delineated in Section 502.1 (B.C.Z.R.) will be satisfied.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1. In fact, the Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A2d 1319 (1981).

The proposed use will not be detrimental to the health, safety or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED, by the Zoning Commissioner of Baltimore County, Maryland, this 6th day of December, 1988 that the Petition

BEGINNING AT A POINT LOCATED ON THE NORTH SIDE OF PULASKI HIGHWAY

(150 FEET WIDE), 388 FEET WEST OF THE CENTERLINE OF WHITE AVENUE

PROPERTY DESCRIPTION - 8012 PULASKI HIGHWAY

LEGAL NOTKES

TOTICE OF HEARING

a Zoning Commissioner of more County, by authority of Zoning Act and Regulations settmore County will hold a file hearing on the property patried herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as fol-

Petition for Special Except.
Case number: 89-77-X
50' N Pulsaid Highway,
587' W White Avenus
(8012 Pulsaid Highway)
15th Election District.
7th Courcilmartic.
Petitioner(s):
Burn Allen Stephenson,

et ust Contract Purchaser: Penn Advertising of Baltimore, Inc. Hearing Date: Thursday, Oct. 27, 1968 at 11:00 a.m.

Special Exception: One (1) the tace illuminated 12' X 25 toor advertising structure.

the event time that yet a building permit may be dividing the thirty (30) day if period. The Zoning Commer will, however, entertain quest for a stay of the isquest for a stay of the isquest for a stay of the isquest for any of the individual operation.

of said permit during this for good cause shown. Specific must be in writing should in this office by the hearing set above or it at the hearing.

J. ROBERT HAINES

for Special Exception for one (1) double faced illuminated 12' x 25' outdoor advertising (sign) structure, as more particularly described on Petitioners' Exhibit 1, be and the same is hereby GRANTED.

OF BALTIMORE COUNTY

cc: Peoples Counsel Mr.and Mrs. B. Allen Stephenson Stuart R. Berger, Esquire Mr. Barry Freidman

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 494-3353 J. Robert Haines

December 5, 1988



Dennis F. Rasmussen

Stuart R. Berger, Esquire 36 South Charles Street Baltimore, Maryland 21201

> RE: Petition for Special Exception Case #88-77X Burn Allen Stephenson, et ux, Petitioners

Dear Mr. Berger:

Enclosed please find the decision rendered in the above captioned case. The Petition has been granted, in accordance with the attached

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, pleae feel free to contact our Appeals Clerk at 494-3391.

> Robert Hainea . Robert Haines Zoning Commissioner

cc: Peoples Counsel Mr. Barry Freidman Mr. and Mrs. Allen Stephenson

Balturere County Zoning Cornmissioner Office of Planning & Zoning Towson, Maryland 21204 NOTICE OF HEARING 7 Toming Cornmissioner of Balti-

Dundalk Eagle

4 N. Center Place P. O. Box 8936 Dundalk, Md. 21222

October 6,

THIS IS TO CERTIFY, that the annexed advertisement of J. Robert Haines in the matter of Zoning Hearings Case #89-77-X - P.O. #05131 - Req. #M20346 - 91 lines 2 \$45.50. a weekly newspaper published in Baltimore County, Maryland, once a week xxxxxxxxxx weeks before the for

19 88 ; that is to say, October

the same was inserted in the issues of October 6, 1988

Kimbel Publication, Inc.

Facto. MD 21201

Baltimore County

494-3353

J. Robert Haines

Zoning Commissioner
Office of Planning & Zoning

Towson, Maryland 21204

Re: POSTPONEMENT REQUEST

Dear Sir: This to acknowledge receipt of your postponement request regarding the following petition:

> Case number: Petitioner(s):

Location:

89-77-X danice Marie Stephonson 8012 Pulaski Hwy.

Please be advised that your request [] will [] will not be granted, and as such, the case [] will [will not proceed on the assigned date of September 21, 1988. Where applicable, you will be timely notified of the new hearing date.

J. ROBERT HAINES ZONING COMMISSIONER BALTIMORE COUNTY, MARYLAND

CC: Genn Goverting of Saltimote Lec.

DEPARTMENT OF BALTIMORE COUNTY 89-77-X CERTIFICATE OF POSTING

Date of Posting 10/5/88 Special Exception Burn Allen STephenson, et us Location of property: NW/S Pulis ki Hwy, 375' W/ white 1775 8012 Pulati Hwy Location of Signer Feering Pulsiki May, approx. 10' Fx Youdway, en property of letchiona Date of return: 10/7/85

CERTIFICATE OF PUBLICATION

TOWSON, MD., Oct. 13

published in THE JEFFERSONIAN, a weekly newspaper published

in Towson, Baltimore County, Md., once in each of ____ successive

weeks, the first publication appearing on Oct. 6, 19 88

THE JEFFERSONIAN,

THIS IS TO CERTIFY, that the annexed advertisement was

(150 FEET WIDE), 388 FEET WEST OF THE CENTERLINE OF WHITE AVENUE (20 FEET WIDE), AND 125 FEET FROM THE CENTERLINE OF PULASKI HIGHWAY AND THENCE RUNNING THE FOLLOWING COURSES AND DISTANCES: HIGHWAY AND THENCE RUNNING THE FOLLOWING COURSES AND DISTANCE OF 1) SOUTHWESTEPLY AND PARALLEL TO PULASKI HIGHWAY A DISTANCE OF 15 FEET TO A POINT, THENCE 3) NORTHEASTERLY AT A DISTANCE OF 30 FEET TO A POINT, THENCE 4) SOUTHEASTERLY AT A RIGHT ANGLE A DISTANCE OF 30 FEET TO THE

*438

The Zoning Commissioner of Baltimore County, by authority of the more County, by authority of Baltimore County will hold a public more County will hold a public hearing on the property identified hearing on the property identified hearing in Room 106 of the County herein Ruidding, located at 111 W.

Office Building located at 111 W. Petrian for Special CASE MUNICIPE RS-774 SST N Pulcish Highway.
388' W White August (8012 Pulcish Highway).
15th Election District.

must be in writing and received in this office by the dake of the hearing set above or presented at the

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 494-3353

J. Robert Haines

Dennis F. Rasmussen County Executive

Penn Advertising of Baltimore, Inc. 3001 Remington Avenue Baltimore, Maryland 21211

Petition for Special Exception CASE NUMBER: 89-77-X 50' N Pulaski Highway, 388' W White Avenue (B012 Pulaski Highway) 15th Election District - 7th Councilmanic Petitioner(s): Burn Allen Stephenson, et ux

Contract Purchaser: Penn Advertising of Baltimore, Inc. HEARING SCIEDULED: WEDNESDAY, SEPTEMBER 21, 1908 at 9:00 a.m. P. P. Thurs., Oct. 27,1988 at 11:00 a.m.

Please be advised that 98.00 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post(s) to the Zoning Office, County Office Building, Room 111, Towson, Maryland 21204 fifteen (15) minutes before your hearing is scheduled to begin.

Please note that should you fail to return the sign and post set(s), there will be an additional \$25.00 added to the above fee for each set not

Very truly yours,

J. Robert Haines J. ROBERT HAINES Zoning Commissioner of Baltimore County

the County Code, which requires notice and hearing prefatory to

amendment. Because no notice or hearings preceded the Gold

and 1963 -- long thereafter applied in the County -- were

the same fashion declared fouled in Metromedia.

declared binding. Despite Metromedia, within months of that

clear declaration, the County merely republished Section 413 in

is whether, when promulgating its current edition of the zoning

(Business Roadside) zone, the Zoning Commissioner can ignore

the Circuit Court for Baltimore County's ruling in Metromedia,

Inc. v. Baltimore County, Eq. No. 103167 and Sections 22-21 and

22-22(a) of the Baltimore County Code. These cases, therefore,

require the Commissioner to determine what "version" of Section

413.3 is applicable to outdoor advertising signs petitioned for

by the Petitioners and contract lessee. In order to assist

Petitioners set out, in pertinent part, the Opinion of Judge

Raine in Metromedia and the two relevant sections of the County

EXCERPT FROM METROMEDIA V. BALTIMORE COUNTY,

EQUITY NO. 103167

this Court in understanding the issue(s) presented, the

regulations which leaves out of Section 413.3 the B. R.

The core -- and unusual -- issue at bar in these cases

Book amendment at bar in Metromedia, the publications of 1957

Stuart R. Berger, Esq.

Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 J. Robert Haines

Baltimore County

September 22, 1988

NOTICE OF HEARING



CHESACO

WHITE

EXHIBIT

Dennis F. Rasmussen The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Special Exception CASE NUMBER: 89-77-X 50' N Pulaski Highway, 388' W White Avenue (8012 Pulaski Highway) 15th Election District - 7th Councilmanic Petitioner(s): Burn Allen Stephenson, et ux Contract Purchaser: Penn Advertising of Baltimore, Inc. HEARING SCHEDULED: THURSDAY, OCTOBER 27, 1988 at 11:00 a.m.

Special Exception: One (1) double face illuminated 12' x 25' outdoor advertising

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES Zoning Commissioner of Baltimore County

cc: Penn Advertising of Baltimore, Inc.

by the County Commissioners of Baltimore County on March 30, 1955. In 1957, and in 1963, the County republished this same version in the "Black" and "Blue" books respectively. For the next fourteen years the County treated these three published versions of Section 413 as the established rule, by adhering to the regulation, insisting that others follow its dictates, and representing to the Courts that this version of Section 413 was the law to be applied to all cases coming within its ambit.

In 1969, without notice or hearing, the County published yet another looseleaf volume of zoning regulations, the Red Book, which substantially altered Section 413 as it appeared in the previously promulgated versions. In 1975, the County published a gold looseleaf edition of the regulations (the Gold book). In this edition, Section 413 followed the Red book but was inconsistent with the Black and Blue books. The County explains the inconsistency as follows: While searching County archives, some county employee found, secreted away in a vault, the original version (the "Soft Book") of the 1955 zoning regulations which differed substantially from the three versions which the County had disseminated. Thereupon the County promulgated a new version of Section 413 in the Red and Gold Books without notice or hearing, picking up the original Soft Book text that differed significantly from the mimeographed and the Black and Blue versions.

The Plaintiff cried foul: The County is changing the rules in the middle of the game. The Plaintiff contends that the County, by repeated publication, abandoned any adherence to the Soft Book and that its long adherence to and dissemination of the old Section 413 constituted a de facto ratification of the mimeographed version of the 1955 zoning regulations. In support of this contention the Plaintiff cites Pease v. Peck, 16 How. (59 US), 595 (1855) which holds that the government's long acquiescence to a law which it has promulgated constitutes a ratification of that law, even though the promulgated version differs from the original text.

The consistent versions of Section 413 in the early mimeographed publication and in the Black Book and the Blue Book became effective and controlling law by publication, dissemination, ratification and long acquiescence. This version of the law was not validly changed by either the Red or the Gold Book since the promulgation of these sets of regulations was not done after the notice and hearing required by Section 22 of the County Code.

This Court will declare that the Defendant must accept application for special exceptions submitted by the Plaintiff

and, after hearing, determine the merits of the application based upon Section 413 as contained in the mimeographed publication of 1957 and 1963. This ruling is applicable only to Section 413 and to no other regulation.

L'CENTERLINE

AVENUE (20' WIPE)

[Issued July 1, 1981, by Raine, J.]

AVENUE (30' WIPE'

EXCERPTS FROM BALTIMORE COUNTY CODE

Sec. 22-21. Preparation of zoning regulations and zoning maps.

(a) The planning board shall from time to time recommend to the county council for adoption, zoning regulations and zoning maps, showing the boundaries of the proposed districts, divisions or zones into which the county is divided pursuant to this title.

(b) The planning board from time to time may also recommend for adoption amendments or supplements to such regulations.... All such amendments or supplements to the zoning regulations and all such comprehensive revisions of the zoning maps shall be made in accordance with the same procedure herein specified for the original adoption of such regulations and maps....

(c) After such zoning regulations and zoning maps have been approved by the planning board, it shall release a preliminary report thereon. Thereafter, and subject to the giving of at least twenty (20) days' public notice in two (2) newspapers of general circulation in the county, the planning board shall hold one (1) or more public hearings on the proposed zoning maps. The board may hold one (1) or more public hearings on the proposed regulations or on matters referred to the board by the county council, unless required to hold such hearings by resolution of the county council adopted pursuant to section 22-7. During the period of such notice, the preliminary report of the planning board, with accompanying maps and exhibits, if any, shall be available for public inspection in the county office building. After such hearing or hearings have been held, the director of planning shall submit to the county council a report containing the final recommendations of the planning board with regard to the proposed zoning regulations, or maps, as the case may be; and,

LAW OFFICES OF in the case of zoning maps, a copy of the final map as approved by the planning board shall be attached to such report. In the event of any disagreement among the members of the planning

board as to any part of the proposed zoning map or regulations,

the dissenting member or members shall be entitled to file with

the county council one (1) or more minority reports stating the

basis for their disagreement with the majority, which shall be

included with the final report of the majority.

PETITIONER'S

PETITIONERS' MEMORANDUM

County, per Raine, J., issued a clear opinion in Metromedia,

Inc. v. Baltimore County, Eq. No. 103167. The Circuit Court

for Baltimore County declared that applications for special

exceptions for outdoor advertising signs, under Section 413.3

of the County's Zoning Regulations, must be determined under

the provisions published in the regulations as printed in 1957

and 1963. The 1975 Gold Book version of Section 413 was found

inapplicable. Further, the Circuit Court for Baltimore County,

Declaratory Judgment Act, 1 reasoned that amendments to the

zoning regulations had to adhere to Section 22-21 and 22-22 of

See §§3-402, 3-406, & 3-411, Courts Article, Md.

in declaring what law applied pursuant to Maryland's

On July 1, 1981, the Circuit Court for Baltimore

ZONING COMMISSIONER

BALTIMORE COUNTY

EXHIBIT 2

JANICE MARIE STEPHENSON, et al.

FOR A PETITION FOR SPECIAL

8012 PULASKI HIGHWAY Case No: 89-77-X

CHARLES J. KUBIN, et al.

10741 PULASKI HIGHWAY

Case No: 89-78-X

FOR A PETITION FOR SPECIAL

EXCEPTION

IN THE MATTER OF

EXCEPTION

Sec. 22-22. Action by county council on adoption of zoning regulations and Zoning maps.

(a) After the county council has received a final report of the planning board recommending adoption of any zoning regulations or zoning maps, the county council shall hold one or more public hearings thereon, giving at least twenty (20) days' notice thereof in at least two (2) newspapers of general circulation in the county. During such twenty (20) day period, the final report of the planning board with accompanying...maps and supporting exhibits, if any, together with any minority report and maps from any dissenting members of the planning board shall be available for inspection at the office of planning and zoning, in each councilmanic district and at such other public place as the county council may designate for public inspection. After the expiration of such period of notice, and following the public hearing or hearings, the county council may by ordinance adopt such regulations or maps, subject, however, to such changes or amendments therein as the county council may deem appropriate, but subject to the provisions of Section 22-21(e).

QUESTION PRESENTED

After the Circuit Court for Baltimore County declared, in Metromedia v. Baltimore County, Equity No. 103167, what was the effective version of Section 413 of the Baltimore County Zoning Regulations, may the Zoning Commissioner ignore the decision, and permit the County to republish a different version of Section 413, so that outdoor advertising signs may

MELNICOYE, KAUFMAN, WEINER, SMOUSE & GARBIS, P.A. SE S. CHARLES STREET

LAW OFFICES OF

MELNICOVE, KAUFMAN,

WEINER, SMOUSE

& GARBIS, P.A.

4 8. CHARLES STREET

21201-3060

not be granted as a Special Exception in a B. R. zone?

LAW OFFICES OF IELNICOVE, KAUFMAN, WEINER, SMOUSE & GARBIS, P.A. G S. CHARLES STREET

In 1955 the County published a mimeographed version of Section 413 of the Baltimore County Zoning Regulations which purported to be in conformity with certain regulations adopted

LAW OFFICES OF AEUNICOVE, KAUFMAN WEINER, SMOUSE & GARBIS, P.A. S. CHARLES STREET

MELNICOVE. KAUFMAN. WEINER, SMOUSE & GARBIS, P.A. S S. CHARLES STREET

LAW OFFICES OF

ARGUMENT

What Metromedia Declared.

The Metromedia decision exemplifies the "very confused and conflicting history" of Section 413 of the zoning regulations. In that context, the Metromedia case was initiated and pursued under Subtitle Four of Title 3 of the Courts Article, Md. Code. A suit for declaratory judgment seeks "to settle and afford relief from uncertainty" rights under a County ordinance. 1 The court's declaration, moreover, "has the force and effect of a final judgment." 1

This Court, in <u>Metromedia</u>, relying upon venerable authority, 3/ determined that the version of Section 413 set out in Petitioners' Exhibit A "became effective and controlling law by publication, dissemination, ratification and long acquiescence [Emphasis supplied]. This law, the Metromedia opinion continued, "was not validly changed by either the Red or the Gold Book since the promulgation of these sets of regulations was not done after the notice and hearing required

2. §3-402, Courts Article, Md. Code; Cockran v.

Zoning Comm'r, 41 Md. App. 437, 439-440 (1979); Marriott Corp.

v. Village Realty & Inv., 58 Md. App. 145, 472 A.2d 510, 513

(1984). See also Restatement, Judgments, 2d (1982), p. 334 (quoted <u>infra</u>., p. 18-19).

- 3. See §3-406, Courts Article, Md. Code.
- 4. §3-411, Courts Article, Md. Code.

LAW OFFICES OF

REUNICOVE, KAUFMAN,

WEINER, SMOUSE

F B. CHARLES STREET

St GARBIS, P.A.

5. Pease v. Peck, 18 How. (59 U.S.) 595 (1855). See, particularly, 18 How. (59 U.S.) at 596-7.

(footnote 5 cont'd)

by Section 22 of the County Code. Consequently, Metromedia declared that the County must apply the version of Section 413 contained in Petitioners' Exhibit A to "applications for special exception submitted by Petitioners. Those versions include B.R. as a zone in which an outdoor advertising sign may be placed as a Special Exception.

In sum, Metromedia declared, as the applicable law, the versions of Section 413.3 which included B.R. as a zone in which, by Special Exception, an outdoor advertising sign could be erected. Further, Metromedia holds that the "applicable law" could not be amended except in accord with Section 22 of the County Code.

The Maryland cases make clear that notice and hearing on amendments to zoning regulations are mandatory. Failure to give notice required by law, for example, is fatal to the jurisdiction to conduct a hearing. See Cassidy v. County Board of Appeals of Baltimore County, 218 Md. 418, 421, 422 (1958). Indeed, even if initial notice is given, substantial change

(footnote 5 cont'd)

LAW OFFICES OF

MELNICOVE, KAUFMAN.

WEINER, SMOUSE

& GARBIS, P.A.

6 S. CHARLES STREET

BALTIMORE, MD

For similar rulings, see Town of Pacific v.

Seifert, 79 Mo. 210, 213 (1883); Wade v. Woodward, 145 So. 737

(Miss. 1933); Edel v. Filer Township, Mainstee County, 211

N.W.2d 547, 549 (Mich. App. 1973); O.P. Corporation v. Village

of North Palm Beach, 278 So.2d 593 (Fla 1973); City of Creston v. Center Milk Products Co., 51 N.W.2d 463, 465 (Iowa, 1952); Taylor v. Schlemmer, 183 S.W.2d 913, 916 (Mo. 1944).

6. There is not doubt that the contract lessee is a division of Metromedia, Inc., the plaintiff in the Metromedia

- 7 -

from what was announced is not proper. See Ransake v. Board of County Commissioners, 268 Md. 295 (1973); Von Lusch v. Board of County Commissioners, 268 Md. 445, 454 (1973). Without affording notice and hearing, there was no substantial compliance with the "applicable law," Crozier v. Co. Comm. Pr. George's Co., 202 Md. 501, 506 (1953), and the publication in the current regulations of the repudiated Gold Book version of Section 413.3 was invalid.

This identical issue, i.e., whether Section 413.3 includes B.R. as a zone in which, by Special Exception, an outdoor advertising sign could be errected has been litigated twice by the contract lessee. Initially, in Metromedia, Inc. v. Baltimore County, Eq. No. 103167, Judge Raine decided the answer in the affirmative. Thereafter, this identical issue came before the Honorable Joseph F. Murphy, Jr. in Circuit Court for Baltimore County Case No. 2/135/84CG435, docketed as In the Matter of the Application of Euclay Realty for a Special Exception. A copy of Judge Murphy's Order in that case is attached hereto as Exhibit B and incorporated by this reference. Judge Murphy agreed, and therefore, reversed the denial of the Petitions for Special Exception in a B.R. Zone by the County Board of Appeals.

Simply stated, Metromedia and Euclay Realty decided that the early disseminated mimeographed version of §413.3 is the controlling law. That version, i.e. in the Black Book or the Blue Book included B.R. as a zone in which a Special Exception could be granted. The existence of Metromedia of the declaration of the law means that in order for Baltimore County to amend §413.3 of the zoning law, the dictates of Section 22-21 and 22-22 of the County Code would have to be followed. They were ignored. Therefore, the version of Section 413.3 declared to the law in Metromedia was not effectively amended in the publicatin of the new regulations. Without adhering to Section 22-21 and 22-22 after the Court's declaration of the law, the Black and Blue Book versions of Section 413.3 which include B.R. as a zone in which an outdoor advertising structure may be located as a Special Exception must be applied.

The Petitioners implore the Zoning Commissioner to review the decisions rendered by the Circuit Court for Baltimore County, and respectfully request that the Commissioner grant the Petitions for Special Exceptions.

Respectfully submitted,

MELNICOVE, KAUFMAN, WEINER, SMOUSE & GARBIS, P.A. 600 Charles Center South 36 South Charles Street Baltimore, Maryland 21201-3060 301-332-8562

Attorneys for Petitioners

& GARBIS, P.A. 36 S. CHARLES STREET 21201-3060

LAW OFFICES OF

MELNICOVE, KAUFMAN,

WEINER, SMOUSE

APPLICATION OF CIRCUIT COURT EUCLAY REALTY FOR A SPECIAL EXCEPTION APPEAL FROM THE COUNTY BALTIMORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY File No. 84-93-X Case 2/135/84CG435 This Appeal having come on for a hearing in open

Court on November 26, 1984, after the submission of the memoranda allowed by Rule Bl2, and the reasons for this Court's judgment having been set forth on the record during the proceedings on November 26, 1984, it is this 29th day of hovember 1984. ADJUDGED, ORDERED and DECREED that the Order of the County Board of Appeals dated July 11, 1984 is reversed and the Special Exception petitioned for by Appellants be and the same is hereby granted.

IELNICOVE, KAUFMAN

WEINER, SMOUSE

& GARBIS, P.A.

6 S. CHARLES STREET

Deputy People's Counsel Room 223, Court House Towson, MD 21204

M. Albert Figinski Melnicove, Kaufman, Weiner & Smouse, P.A. 36 S. Charles Street

Baltimore, MD 21201 DEFENDANT'S EXHIBIT.









